

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

These amendments are in direct response to requirements from the Centers for Medicare and Medicaid Services (CMS) for the intellectual disability (ID) and brain injury (BI) waivers. These amendments address three issues:

- The amendments remove transportation to medical appointments from the home- and community-based services (HCBS) waiver transportation service description and clarify the use of transportation when provided as part of the supported community living (SCL) service in the ID and BI waivers.
- The amendments remove a “related condition” as a basis of eligibility for residential-based supported community living (RBSCL) services under the ID waiver. No children have accessed these services within the “related condition” diagnostic category.
- The amendments change the definition of “intellectual disability” to the updated definition found in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).

These amendments also update the BI waiver SCL service to be the same as the ID waiver SCL service that allows transportation to and from work or day programs to be an SCL service component.

During the ID and BI waiver application renewal review, CMS indicated that the state may no longer provide transportation to medical appointments for HCBS waiver members through the HCBS waiver transportation service. CMS identified that medical transportation may not be provided to HCBS members as part of the supported community living service within the ID and BI waivers. Transportation provided through the HCBS waiver programs may include only nonmedical transportation. All nonemergency medical transportation (NEMT) must be provided through the state plan NEMT program.

As part of the renewal review, CMS also identified that the state may not include a related condition as a basis of eligibility only for RBSCL services under the ID waiver. Eligibility for the ID waiver must be the same for all services within the waiver. Eligibility cannot be based on a related condition only for the RBSCL service.

The definition of an intellectual disability has changed with the most recent DSM-5 edition. These amendments update the current DSM-IV definition of “intellectual disability” for use in the ID waiver. Changes to the rules reflect the DSM-5 criteria and the developmental time periods for making the diagnosis. The time line for having current psychological documentation is changed for consistency with recertification requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1982C** on April 29, 2015. The Department received no comments during the comment period. The only change from the Notice is the addition of “level of” in the phrase “level of severity” in the last row of the table in paragraph 83.61(1)“a.”

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments should be made effective July 1, 2015. The normal effective date can be waived since these amendments confer a benefit on the public by ensuring that state regulations remain in compliance with federal regulations and in accordance with federal law. CMS in a recent audit identified that medical transportation may not be provided to HCBS members as part of the supported community living service within the ID and BI waivers. Transportation provided through the HCBS waiver programs may include only nonmedical transportation. All NEMT must be provided through the state plan NEMT program.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective July 1, 2015.

The following amendments are adopted.

ITEM 1. Amend subrule 78.37(11) as follows:

78.37(11) Transportation. Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip.

ITEM 2. Amend subparagraph **78.41(1)“a”(5)** as follows:

(5) Transportation services are activities and expenditures designed to assist the member to travel from one place to another to obtain services or carry out life’s activities. The services exclude transportation provided as nonemergency medical transportation pursuant to rule 441—78.13(249A).

ITEM 3. Amend subrule 78.41(11) as follows:

78.41(11) Transportation. Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip. Transportation may not be reimbursed simultaneously with HCBS intellectual disability waiver supported community living service when the transportation costs are included within the supported community living reimbursement rate.

ITEM 4. Amend subparagraph **78.43(2)“a”(5)** as follows:

(5) Transportation services are activities and expenditures designed to assist the member to travel from one place to another to obtain services or carry out life’s activities. ~~The service excludes services exclude transportation to and from work or day programs~~ provided as nonemergency medical transportation pursuant to rule 441—78.13(249A).

ITEM 5. Amend subrule 78.43(7) as follows:

78.43(7) Transportation. Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip. Transportation may not be reimbursed simultaneously with HCBS brain injury waiver supported community living service when the transportation costs are included within the supported community living reimbursement rate.

ITEM 6. Amend subrule 78.46(5) as follows:

78.46(5) Transportation. Transportation services may be provided for members to conduct business errands and essential shopping, ~~to receive medical services when not reimbursed through nonemergency medical transportation,~~ to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip.

ITEM 7. Amend rule **441—83.60(249A)**, definition of “Intellectual disability,” as follows:

“Intellectual disability” means a diagnosis of ~~mental retardation~~ intellectual disability (intellectual developmental disorder), global developmental delay, or unspecified intellectual disability (intellectual developmental disorder) which shall be made only when the onset of the person’s condition was ~~before the age of 18 years~~ during the developmental period and shall be based on an assessment of the person’s intellectual functioning and level of adaptive skills. The diagnosis shall be made by a person who is a licensed psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person’s adaptive skills. ~~A~~ The diagnosis of ~~mental retardation~~ shall be made in accordance with the criteria provided in the Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth~~ Fifth Edition (DSM-5), ~~Text Revision~~, published by the American Psychiatric Association.

ITEM 8. Amend paragraph **83.61(1)“a”** as follows:

a. Have a diagnosis of ~~mental retardation or, for residential-based supported community living services only, be a person with a related condition~~ intellectual disability as defined in rule 441—83.60(249A). The diagnosis shall be initially established and recertified as follows:

Age	Initial application to HCBS intellectual disability waiver program	Recertification for persons with a diagnosis of moderate, severe or profound mental retardation level of severity	Recertification for persons with a diagnosis of mild or unspecified mental retardation level of severity
0 through 17 years	Psychological documentation within three years of the application date substantiating a diagnosis of mental retardation or, for residential-based supported community living services, a diagnosis of a related condition <u>intellectual disability</u> as defined in rule 441—83.60(249A)	After the initial psychological evaluation, substantiate a diagnosis of mental retardation or, for residential-based supported community living services, a diagnosis of a related condition <u>intellectual disability</u> as defined in rule 441—83.60(249A) every six years and when a significant change occurs	After the initial psychological evaluation, substantiate a diagnosis of mental retardation or, for residential-based supported community living services, a diagnosis of a related condition <u>intellectual disability</u> as defined in rule 441—83.60(249A) every three years and when a significant change occurs
18 through 21 years	<ul style="list-style-type: none"> ▪ Psychological documentation substantiating diagnosis of mental retardation within three years before the application date, or ▪ Diagnosis of mental retardation made before age 18 and current psychological documentation substantiating a diagnosis of mental retardation 	Psychological documentation substantiating a diagnosis of mental retardation every ten years and whenever a significant change occurs	Psychological documentation substantiating a diagnosis of mental retardation every five years and whenever a significant change occurs
22 18 years and above	Diagnosis made before age 18 and current Current psychological documentation substantiating a diagnosis of mental retardation <u>intellectual disability</u> if the last testing date was (1) more than five <u>six</u> years ago for an applicant with a diagnosis of mild or unspecified mental retardation severity , or (2) more than ten years ago for an applicant with a diagnosis of moderate, severe or profound mental retardation level of severity	Psychological documentation substantiating a diagnosis of mental retardation <u>intellectual disability</u> made since the member reached 18 <u>22</u> years of age	Psychological documentation substantiating a diagnosis of mental retardation <u>intellectual disability</u> every six years and whenever a significant change occurs

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